IN THE

Supreme Court

of the United States

OCTOBER TERM, 1924

No. 147

REAL SILK HOSIERY MILLS (Incorporated),
Appellant,

vs.

CITY OF PORTLAND, a Municipal Corporation; GEORGE L. BAKER, Mayor of the City of Portland; FRANK S. GRANT, City Attorney of the City of Portland; L. V. JENKINS, Chief of Police of the City of Portland; and J. S. HUTCHINSON, Inspector of Licenses of said City of Portland, Oregon,

Appellees.

Brief of Appellees

STATEMENT OF FACTS

This is a suit to enjoin the appellees from enforcing, as against the appellant, Ordinance No. 40468 of the City of Portland, Oregon, as amended by Ordinance No. 42886, relating to solicitors.

Ordinance No. 40468 is the general license

ordinance of the City of Portland. It relates to the regulation and licensing of numerous businesses and occupations and provides a penalty by fine or imprisonment, or both, for violation of its provisions. Ordinance No. 42886 added to the general ordinance a new article regulating solicitors and fixing the amount of the license fee to be paid. The amendatory ordinance is complete in itself as to the provisions involved in this suit, and for the sake of brevity the provisions of the general ordinance need not be otherwise referred to.

For the convenience of the court in saving reference to the record, we herein set out the particular sections of the amendatory ordinance involved in this suit:

"ARTICLE XLV½

"SOLICITORS

"Section 1. *Definition.* A solicitor within the meaning of this article is defined to be any person who goes from house to house or from place to place in the City of Portland, selling or taking orders for, or offering to sell or take orders for goods, wares or merchandise or any article for future delivery, or for services to be performed in the future, or for the making, manufacturing, or repairing of any article or thing whatsoever for future de-

livery, provided, however, that this article shall apply only to solicitors who demand, accept or receive payment or deposit of money in advance of final delivery.

"Section 2. *License.* It shall be unlawful for any person to act as a solicitor within the meaning and application of this article without first securing a license from the Bureau of Licenses so to do.

"Section 3. *Application—Bond.* Any person desiring a license to engage as a solicitor within the City of Portland, shall make application therefor to the Bureau of Licenses, on forms to be provided, stating the name and address of the applicant, the name and address of the person, firm or corporation which he represents, and the kind of goods offered for sale, or the kind of services to be performed. Such application shall be accompanied by a bond in the penal sum of $500.00 executed by a surety company or by two responsible freeholders residing in the City of Portland (or in lieu thereof a cash bond of equal amount), conditioned upon the making of final delivery of the goods ordered, or services to be performed, in accordance with the terms of such order, or failing therein, that the advance payment on such order be refunded. Any person aggrieved by the action of any such solicitor shall have a right of action on the bond for the recovery of money or damages, or both. Such bond shall remain in full force and effect, and in case of a cash

deposit, such deposit shall be retained by the City of Portland, for a period of ninety days after the expiration of any such license, unless sooner released by the Council.

"Section 4. *Orders.* All orders taken by licensed solicitors shall be in writing, in duplicate, stating the terms thereof and the amount paid in advance and one copy shall be given to the purchaser."

By the amendatory ordinance, also, there was inserted, in proper alphabetical order, in the schedule of fees of Section 16, Article LII of said Ordinance No. 40468, the following:

"SOLICITOR—One who demands, receives or accepts payment or deposit in advance of final delivery:

Those on foot.....	Quarterly	$12.50
	Monthly	5.00
Those using a vehicle..	Quarterly	$25.00
	Monthly	10.00"

The emergency clause on the amendatory ordinance (Section 3), reads as follows:

"Inasmuch as this ordinance is necessary for the immediate preservation of the public health, peace and safety of the City of Portland in this: That a condition now exists whereby in the past frauds have been perpetrated upon the public by certain solicitors, and which condition requires immediate rem-

edy, therefore an emergency is hereby declared to exist and this ordinance shall be in force and effect from and after its passage by the Council."

In this case there must be a clear and perfect understanding of the facts as alleged in the bill before a correct application of the law can be made. The appellant is before the court on its bill and the facts therein stated. Appellees have responded to that bill and to nothing else. Accuracy as to the facts must be observed, that the true principles of the law can be applied.

Appellant asserts that it is engaged in the manufacture of silk hosiery and transacts its business through solicitors; that it maintains a District Sales Manager's office in the City of Portland where solicitors send their orders and from such office these orders are forwarded directly to the office of appellant in Indianapolis, Indiana; that it is engaged in interstate commerce for the reason that the manufactured goods upon leaving the appellant's factory in Indianapolis, Indiana, are continually in transit until they reach the ultimate purchasers in the various states in which it transacts business, and particularly in the City of Portland, Oregon. The orders are taken upon printed forms. Copies of the forms are set out in the bill. It is alleged that the system enables appellant to

sell to its customers at practically factory cost, eliminates expense and commissions. When such orders are received they are accompanied by a small payment, differing in amount according to the character, quality and quantity of the hosiery order. The deposit made by the purchaser is retained by the solicitor as payment for his services in full and is his sole compensation. The price of ordered goods received by appellant is collected by the post office department through its "collect on delivery" system. The order form states that the mills require a deposit on each order; that the hosiery will be mailed by parcel post c. o. d. direct from the post office branch in the mills. The customer is advised, on the order form, to pay the balance due to the postman. The customer is further advised, on the order form, that the entire business of the Real Silk Hosiery Mills is conducted on the parcel post c. o. d. basis, and that its representative cannot accept the order unless the deposit is made. The customer is further advised that the mills do not accept full payment in advance. The customer is warned not to pay more than the amount of deposit printed on the order form. Three printed forms of orders are used. Prices of hosiery vary. Solicitors may be compensated as high as three dollars on a single order. There is a statement on the order form that chiffon hosiery is not guaranteed. Ladies' hosiery

only is guaranteed. There is no statement on the order blank advising the customer that the payment in advance is the compensation of the solicitor. No statement is made concerning the quality of the goods sold, save that ladies' regular hosiery carries an absolute guarantee. There is no statement as to what is meant by a guarantee, and there is no statement, on the order blank, that if goods are not as represented by solicitor, they may be returned or exchanged.

Three principal contentions are made by appellant in its bill: (1) That the ordinance is an attempted regulation of interstate commerce; (2) that the ordinance discriminates against solicitors who take a payment in advance in favor of solicitors, drummers, etc., who do not, and (3) that the license fee charged is excessive.

POINTS AND AUTHORITIES

1. It is conceded that congress alone can impose a direct burden on interstate commerce, and that the commerce clause of the constitution, of its own force, restrains the states from so doing, whether congress has acted or not.

Robbins v. Taxing District, 120 U. S. 489, 30 L. ed. 694, 7 Sup. Ct. Rep. 592.

Minn. Rate Cases (Simpson v. Shepherd), 230 U. S. 352, 396; 57 L. ed 1511, 1540, 33 Sup. Ct. Rep. 729; 48 L. R. A. (N. S.) 1151; Ann Cas. 1916A, 18.

2. Since the police power does not admit of exact definition, each contention of conflict between the police power of the state and the powers granted to the national government must to a large extent be decided upon its own merits.

Welton v. Mo., 91 U. S. 275, 282, 23 L. ed. 347, 350.

3. There is no contention that this ordinance discriminates against merchandise because of its origin in another state.

Sonneborn Bros. v. Keeling, 262 U. S. 506, 67 L. ed. 1095.

4. In matters of local concern, the states in the exercise of their police powers, may legislate in the interest of the health, safety, morals and gen-

eral welfare of their people, and such legislation is valid notwithstanding that interstate commerce is incidentally affected thereby.

Gibbons v. Ogden, 22 U. S. 9 Wheat. 1, 203, 6 L. ed. 23, 72.

Gilman v. Philadelphia, 3 Wall. 713, 18 L. ed. 96, 100.

Sherlock v. Alling, 93 U. S. 99, 23 L. ed. 819.

Escanaba Co. v. Chicago, 107 U. S. 678, 27 L. ed. 442, 2 Sup. Ct. Rep. 185.

Barbier v. Connolly, 113 U. S. 27, 28 L. ed. 923; 5 Sup. Ct. Rep. 357.

Walling v. Michigan, 116 U. S. 446, 29 L. ed. 691, 6 Sup. Ct. Rep. 454.

Philadelphia & S. Mail S. S. Co. v. Pa., 122 U. S. 326, 30 L. ed. 1200, 7 Sup. Ct. Rep. 1118.

Re Rahrer, 140 U. S. 545, 35 L. ed. 572, 11 Sup. Ct. Rep. 865.

Leloup v. Mobile, 127 U. S. 640, 32 L. ed. 311, 8 Sup. Ct. Rep. 1380.

Hebe Co. v. Calvert, 246 Fed. 711.

Missouri ex rel. Barrett v. Kansas National Gas Co., 44 Sup. Ct. Rep. 544, 68 L. ed. 585.

State v. Leary, 125 Atl. (R. I.) 353, 354.

5. In matters where the local interest is paramount to the national interest, state regulations have been sustained notwithstanding the incidental interference with interstate commerce. Cases sustaining such regulations are numerous.

The following cases contain illustrations of regulations recognized to be within the state jurisdiction.

Regulations affecting public safety:

N. Y., N. H. & H. R. Co. v. N. Y., 165 U. S. 628, 41 L. ed. 853.

Hennington v. Ga., 163 U. S. 299, 317; 16 Sup. Ct. Rep. 1086; 41 L. ed. 166, 173.

Smith v. Ala., 124 U. S. 465; 8 Sup. Ct. Rep. 564; 31 L. ed. 508.

Nashville C. & St. L. R. Co. v. Ala., 128 U. S. 96; 32 L. ed. 352, 9 Sup. Ct. Rep. 28.

Chicago R. I. & P. R. Co. v. Ark., 219 U. S. 453; 55 L. ed. 290, 31 Sup. Ct. Rep. 275.

W. U. Tel. Co. v. N. Y., 38 Fed. 552.

Sherlock v. Alling, 93 U. S. 99, 23 L. ed. 819.

Martin v. Pittsburgh & L. E. R. Co., 203 U. S. 284, 51 L. ed. 184, 27 Sup. Ct. Rep. 100.

United States v. Hart, Peters, C. C., (U. S.) 390.

Sligh v. Kirkwood, 237 U. S. 52, 59 L. ed. 835, 35 Sup. Ct. Rep. 501.

Regulations affecting public health:

Schollenberger v. Pa., 171 U. S. 1; 43 L. ed. 49, 18 Sup. Ct. Rep. 759.

Bowman v. Chicago & N. W. R. Co., 125 U. S. 465; 31 L. ed. 700, 8 Sup. Ct. Rep. 689.

Barbier v. Connolly, 113 U. S. 27, 28 L. ed. 923, 5 Sup. Ct. Rep. 357..

Powell v. Pa., 127 U. S. 678, 32 L. ed. 253.

Compagnie Francaise v. Louisiana State Board of Health, 186 U. S. 380, 46 L. ed. 1209, 22 Sup. Ct. Rep. 811.

International Textbook Co. v. District of Columbia, 35 App. D. C. 307.

Inspection laws:

New Mexico ex rel v. Denver & R. G. R. R. Co., 203 U. S. 38, 27 Sup. Ct. Rep. 1, 51 L. ed. 78.

Patapsco Guano Co. v. Board of Agriculture, 171 U. S. 345; 43 L. ed. 195.

Savage v. Jones, 225 U. S. 501, 56 L. ed. 1182, 32 Sup. Ct. Rep. 715.

Regulations as to pilotage:

Ex parte McNeil, 13 Wall. 236, 20 L. ed. 624.

Cooley v. Port Wardens, 12 How. 299, 13 L. ed. 996.

Olsen v. Smith, 195 U. S. 332, 25 Sup. Ct. Rep. 52, 49 L. ed. 224.

Regulations with reference to special facilites provided:

Transportation Co. v. Parkersburg, 107 U. S. 691; 27 L. ed. 584; 2 Sup. Ct. Rep. 732.

Kane v. N. J., 242 U. S. 160; 61 L. ed. 222, 37 Sup. Ct. Rep. 30.

Hendrick v. Md., 235 U. S. 610; 59 L. ed. 385, 35 Sup. Ct. Rep. 140.

Regulations designed to prevent fraud and deceit:

Plumley v. Mass., 155 U. S. 461, 15 Sup. Ct. Rep. 154; 39 L. ed. 223.

Broadnax v. Mo., 219 U. S. 285, 55 L. ed. 219.

Hall v. Geiger-Jones Co., 242 U. S. 539; 61 L. ed. 480; L. R. A. 1917F, 514.

Merrick v. Halsey & Co., 242 U. S. 568, 61 L. ed. 498, 37 Sup. Ct. Rep. 227.

Caldwell v. Sioux Falls Stock Yards Co., 242 U. S. 559, 37 Sup. Ct. Rep. 223, 61 L. ed. 493.

Arbuckle v. Blackburn, 191 U. S. 405, 24 Sup. Ct. 148, 48 L. ed. 239.

Crossman v. Lurman, 192 U. S. 189, 24 Sup. Ct. 234, 48 L. ed. 401.

Standard Home Co. v. Davis, 217 Fed. 904.

Regulations affecting public convenience:

Lake Shore & M. S. R. Co. v. Ohio ex rel. Lawrence, 173 U. S. 285; 43 L. ed. 702; 19 Sup. Ct. Rep. 465.

New York ex rel. Pa. R. Co. v. Knight, 192 U. S. 21, 48 L. ed. 325; 24 Sup. Ct. Rep. 202.

Automobiles:

Hendrick v. Md., 235 U. S. 610; 59 L. ed. 385, 35 Sup. Ct. Rep. 140.

Kane v. N. J., 242 U. S. 160; 61 L. ed. 222, 37 Sup. Ct. Rep. 30.

6. The declaration of the law-making power as to the purpose of the law, is entitled to much weight.

Flint v. Stone-Tracey Co., 220 U. S. 107, 55 L. ed. 389, 31 Sup. Ct. Rep. 342.
Freund Police Power, p. 260.

7. The constitution of the United States does not secure to anyone the privilege of defrauding the public.

Plumley v. Mass., 155 U. S. 461, 15 Sup. Ct. Rep. 154, 39 L. ed. 223.

8. Legislation to prevent crime is of greater benefit to society than punishment of the offender after the crime has been committed, and effective legislation to prevent frauds can be provided only by the state.

Standard Home Co. v. Davis, 217 Fed. 904.
Freund Police Power, Sec. 272, page 260.

9. There is nothing new in the principle that a business may be regulated by a state on the basis of character and conduct of the persons engaged therein, and such regulations are not repugnant to the 14th Amendment.

Gundling v. Chicago, 177 U. S. 183, 20 Sup. Ct. Rep. 633, 44 L. ed. 725.
Bratton v. Chandler, 260 U. S. 110, 67 L. ed. 157.

10. Conduct of individuals, even in reference to matters of interstate commerce, is not, in itself, interstate commerce, and state regulations with reference thereto are valid though indirectly affecting interstate commerce.

Musco v. United Surety Co., 196 N. Y. 459, 90 N. E. 171, 134 Am. St. Rep. 851.

Western U. Tel. Co. v. James, 162 U. S. 650, 16 Sup. Ct. Rep. 934, 40 L. ed. 1105.

11. It is not necessary that fraud be an incident of the business itself in order to justify a regulation designed to prevent fraud, it is enough that the business from the manner in which it is generally conducted invites and encourages fraud.

Merrick v. Halsey & Co., 242 U. S. 568, 61 L. ed. 498.

Engel v. O'Malley, 219 U. S. 128, 55 L. ed. 128, 31 Sup. Ct. Rep. 190.

Allen v. Riley, 203 U. S. 347, 51 L. ed. 216, 27 Sup. Ct. Rep. 95.

Brazee v. Michigan, 241 U. S. 340, 60 L. ed. 1034, 36 Sup. Ct. Rep. 561.

Broadnax v. Missouri, 219 U. S. 285, 55 L. ed. 219, 31 Sup. Ct. Rep. 238.

12. Cost and inconvenience would have to be very great, before they could be an element in the consideration of the right of a state to exert its reserved power or its police power.

Erie R. Co. v. Williams, 233 U. S. 685, 58 L. ed. 1155.

New York & N. E. R. Co. v. Bristol, 151 U. S. 556, 38 L. ed. 269, 14 Sup. Ct. Rep. 437.

U. S. v. Union P. R. Co., 160 U. S. 1, 40 L. ed. 319, 16 Sup. Ct. Rep. 190.

St. Louis, I. M. & S. R. Co. v. Paul, 173 U. S. 404, 43 L. ed. 746, 19 Sup. Ct. Rep. 419.

Wisconsin M. & P. R. Co. v. Jacobson, 179 U. S. 287, 45 L. ed. 194, 21 Sup. Ct. Rep. 115.

13. There is nothing in the constitution of the United States which forbids classification of subjects for the purpose of legislation.

Barbier v. Connolly, 113 U. S. 27, 28 L. ed. 923, 5 Sup. Ct. Rep. 357.

Atchison T. & S. F. R. Co. v. Mathews, 174 U. S. 96, 43 L. ed. 909, 19 Sup. Ct. Rep. 609. .

14. The legislature of a state and likewise a municipality in carrying out the objects intended to be accomplished by legislation may make discriminations if founded on distinctions which are not unreasonable or purely arbitrary.

Quong Wing v. Kirkendall, 223 U. S. 59, 32 Sup. Ct. Rep. 192, 56 L. ed. 350, 351.

Rast v. Van Deman & Lewis Co., 240 U. S. 342, 60 L. ed. 679, 36 Sup. Ct. Rep. 370.

Tanner v. Little, 240 U. S. 369, 60 L. ed. 691, 36 Sup. Ct. Rep. 379.

Ozan Lbr. Co. v. Union County National Bank, 207 U. S. 251, 52 L. ed. 195, 28 Sup. Ct. Rep. 89.

Heath & Milligan Mfg. Co. v. Worst, 207 U. S. 338, 28 Sup. Ct. Rep. 114, 52 L. ed. 236.

Engel v. O'Malley, 219 U. S. 128, 31 Sup. Ct. Rep. 190, 55 L. ed. 129.

Mobile County v. Kimball, 102 U. S. 691, 26 L. ed. 238.

15. The question of the amount of the fee is primarily for determination by the council rather than by the courts, so long as the fee is reasonable and fixed according to some uniform, fair and practical standard.

Encyclopedia of United States Sup. Ct. Rep., Vol. 7, p. 875-877.

Hendrick v. Md., 235 U. S. 610; 59 L. ed. 385; 35 Sup. Ct. Rep. 140.

Parkersburg & O. River Transportation Co. v. Parkersburg, 107 U. S. 691; 27 L. ed. 584; 2 Sup. Ct. Rep. 732.

Minn. Rate Cases, 230 U. S. 352; 57 L. ed. 1511; 48 L. R. A. (N. S.) 1151; 33 Sup. Ct. Rep. 729.

N. Mex. ex rel. McLean v. D. & R. G. R. R. Co., 203 U. S. 38, 51 L. ed. 78.

Patapsco Guano Co. v. Board of Agriculture, 171 U. S. 355; 43 L. ed. 195, 18 Sup. Ct. Rep. 862.

McQuillin on Mun. Corporations, Vol. 3, p. 2230.

Western Union Tel. Co. v. New Hope, 187 U. S. 419, 47 L. ed. 240, 23 Sup. Ct. Rep. 204..

Atlantic & Pacific Tel. Co. v. Philadelphia, 190 U. S. 160, 23 Sup. Ct. Rep. 817, 47 L. ed. 995.

16. In the absence of proof to the contrary, it will be assumed that a license fee is proportionate to the amount of municipal supervision required.

International Text-Book Co. v. Distict of Columbia, 35 App. D. C. 307.

Western Union Tel. Co. v. New Hope, 187 U. S. 419, 47 L. ed. 240, 23 Sup. Ct. Rep. 204.

17. The regulatory fee charged under this ordinance is not of the same character as the license fees exacted in the so-called "Drummer Cases," for in those cases the legislature imposed a direct property tax, or an excise tax, a privilege tax, an occupational tax, a sales tax, a gross receipts tax, or a direct tax of some nature upon the business or upon the property moving in interstate commerce.

Brown v. Maryland, 12 Wheat. 419, 6 L. ed. 678.

Walling v. Michigan, 116 U. S. 446, 29 L. ed. 691, 6 Sup. Ct. Rep. 454.

Robbins v. Taxing District of Shelby County, 120 U. S. 489, 30 L. ed. 694, 1 Inters. Com. Rep. 45, 7 Sup. Ct. Rep. 592.

Philadelphia & S. Mail S. S. Co. v. Pennsylvania, 122 U. S. 326, 30 L. ed. 1200, 7 Sup. Ct. Rep. 1118.

Asher v. Texas, 128 U. S. 129, 32 L. ed. 368, 2 Inters. Com. Rep. 241, 9 Sup. Ct. Rep. 1.

Stoutenburg v. Hennick, 129 U. S. 141, 9 Sup. Ct. Rep. 256, 32 L. ed. 637.

McCall v. California, 136 U. S. 104, 3 Inters. Com. Rep. 181, 34 L. ed. 391, 10 Sup. Ct. Rep. 881.

Brennan v. Titusville, 153 U. S. 289, 38 L. ed. 719, 4 Inters. Com. Rep. 658, 14 Sup. Ct. Rep. 829.

Stockard v. Morgan, 185 U. S. 27, 46 L. ed. 785, 22 Sup. Ct. Rep. 576.

Davis v. Virginia, 236 U. S. 697, 59 L. ed. 795, 35 Sup. Ct. Rep. 479.

Cheney Bros. Co. v. Massachusetts, 246 U. S. 147, 62 L. ed. 632, 38 Sup. Ct. Rep. 295.

Western Oil Refining Co. v. Lipscomb, 244 U. S. 346, 61 L. ed. 1181, 37 Sup. Ct. Rep. 623.

Rogers v. Arkansas, 227 U. S. 401, 57 L. ed. 569, 33 Sup. Ct. Rep. 298.

Crenshaw v. Arkansas, 227 U. S. 389, 57 L. ed. 565, 33 Sup. Ct. Rep. 294.

Rearick v. Pennsylvania, 203 U. S. 507, 51 L. ed. 295, 27 Sup. Ct. Rep. 159.

Dozier v. Alabama, 218 U. S. 124, 54 L. ed. 965, 28 L. R. A. (N. S.) 264, 30 Sup. Ct. Rep. 649.

ARGUMENT

DOES ORDINANCE VIOLATE INTERSTATE COMMERCE CLAUSE?

At the very threshold of this matter the appellees, freely, concede that congress, alone, can impose a direct burden on interstate commerce, and that the commerce clause of the constitution, of its own force, restrains the states from so doing, whether congress has acted in the matter or not.

Robbins v. Taxing District, 120 U. S. 489, 7 Sup. Ct. Rep. 592, 1 Inters. Com. Rep. 45, 30 L. ed. 694.

Minn. Rate Cases (Simpson v. Shepherd), 230 U. S. 352, 396; 57 L. ed. 1511, 1540; 33 Sup. Ct. Rep. 729; 48 L. R. A. (N. S.) 1151; Ann. Cas. 1916A 18.

If this were the whole conclusion of the matter, we would not presume to take the time of this court, or of any court, to argue this case. But there is a point to which a state legislature may go without infringing upon the province of congress. The line of demarcation between cases where the state is authorized to act, in the absence of congressional legislation, and those cases where the states are precluded from acting by mere force of the commerce clause, is not always clearly defined. And this will always be so, and questions of this nature will continue to arise for the reason

that the police power, from its very nature, is incapable of exact definition or limitation. It reaches out generally to control everything which affects the health, peace, safety and morals of the people, and as new conditions arise, and as public opinion creates new standards of valuation, it will reach out in a never ending procession of legislative enactments to cope with the situation. It is inevitable that contention will arise as to the power of the states and the power of the national government. Hence, each individual case must, to a large extent, be decided upon its own merits.

Welton v. Missouri, 91 U. S. 275, 282; 23 L. ed. 347, 350.

Speaking generally, a state—and in the term "state" we include the municipality exercising police powers of the state—in the absence of national legislation, may constitutionally impose taxes, exact inspection laws, quarantine laws, and generally laws of internal police. This rule is subject to the proviso, however, that such local legislation must not discriminate against merchandise because of its origin in another state; Sonneborn Bros. v. Keeling, 262 U. S. 506, 67 L. ed. 1095—a situation which does not appear in this case.

The interest which the state is authorized to protect under its reserved police power is the local interest, as distinguished from matters of national

scope, and the state may by appropriate legislation protect such local interests. Such legislation is valid under the commerce clause of the national constitution notwithstanding that interstate commerce may to some extent be affected or interfered with thereby.

Gibbons v. Ogden, 22 U. S. 9 Wheat. 1, 203, 6 L. ed. 23, 72.

Gilman v. Philadelphia, 3 Wall. 713, 18 L. ed. 96, 100.

Sherlock v. Alling, 93 U. S. 99, 23 L. ed. 819.

Escanaba Co. v. Chicago, 107 U. S. 678, 27 L. ed. 442, 2 Sup. Ct. Rep. 185.

Barbier v. Connolly, 113 U. S. 27, 5 Sup. Ct. Rep. 357, 28 L. ed. 923.

Walling v. Michigan, 116 U. S. 446, 29 L. ed. 691, 6 Sup. Ct. Rep. 454.

Philadelphia & S. Mail S. S. Co. v. Pa. 122 U. S. 326, 30 L. ed. 1200, 7 Sup. Ct. Rep. 1118.

Re Rahrer, 140 U. S. 545, 35 L. ed. 572, 11 Sup. Ct. Rep. 865.

Leloup v. Mobile, 127 U. S. 640, 32 L. ed 311, 8 Sup. Ct. Rep. 1380.

Hebe Co. v. Calvert, 246 Fed. 711.

Missouri ex rel. Barrett v. Kansas National Gas Co., 44 Sup. Ct. Rep. 544, 68 L. ed. 585.

State v. Leary, 125 Atl. (R. I.) 353, 354.

In the case of Gibbons v. Ogden, 22 U. S. 9 Wheat. 1, 203, 6 L. ed. 23, 72, involving the power

of the state of New York to grant to certain persons exclusive navigation of all the waters within its jurisdiction, Chief Justice MARSHALL said:

> "In our complex system, presenting the rare and difficult scheme of one general government, whose action extends over the whole, but which possesses only certain enumerated powers, and of numerous state governments, which retain and exercise all powers not delegated to the Union, contests respecting power must arise. Were it even otherwise, the measures taken by the respective governments to execute their acknowledged powers, would often be of the same description, and might, sometimes, interfere. This, however, does not prove that the one is exercising, or has a right to exercise, the powers of the other."

In the Minn. Rate Cases, 230 U. S. 352, 57 L. ed. 1511, 33 Sup. Ct. Rep. 729, 48 L. R. A. (N. S.) 1151, Ann. Cas. 1916A, 18, involving a conflict between the province of the state and of the national government in the fixing of railroad rates, Mr. Justice HUGHES said:

> "The grant in the constitution of its own force, that is, without action by congress, established the essential immunity of interstate commercial intercourse from the direct control of the states with respect to those subjects embraced within the grant which are of such a nature as to demand that, if regulated

at all, their regulation should be prescribed by a single authority. It has repeatedly been declared by this court that as to those subjects which require a general system or uniformity of regulation, the power of congress is exclusive. In other matters, admitting of diversity of treatment according to the special requirements of local conditions, the states may act within their respective jurisdictions until Congress sees fit to act; and, when congress does act, the exercise of its authority overrides all conflicting state legislation."

Speaking in Gilman v. Philadelphia (3 Wall. 713, 18 L. ed. 96, 100), Mr. Justice SWAYNE said:

"The power to regulate commerce covers a wide field, and embraces a great variety of subjects. Some of these subjects call for uniform rules and national legislation; others can be best regulated by rules and provisions suggested by the varying circumstances of different localities, and limited in their operation to such localities respectively. To this extent the power to regulate commerce may be exercised by the states.

"Whether the power in any given case is vested exclusively in the general government depends upon the nature of the subject to be regulated. Pilot laws are regulations of commerce; but if a state enacts them in good faith, and not covertly for another purpose, they are not in conflict with the power 'to regulate

> commerce' committed to congress by the constitution. Cooley v. The Wardens, etc., 12 How. 319."

In Escanaba Co. v. Chicago (107 U. S. 678, 27 L. ed. 442, 445, 2 Sup. Ct. Rep. 185), Mr. Justice FIELD says:

> "But the states have full power to regulate within their limits matters of internal police, including in that general designation whatever will promote the peace, comfort, convenience and prosperity of their people. This power embraces the construction of roads, canals and bridges, and the establishment of ferries, and it can generally be exercised more wisely by the states than by a distant authority. They are the first to see the importance of such means of internal communication, and are more deeply concerned than others in their wise management. Illinois is more immediately affected by the bridges over the Chicago River and its branches than any other state, and is more directly concerned for the prosperity of the City of Chicago, for the convenience and comfort of its inhabitants and the growth of its commerce."

A statute of the State of Rhode Island (Laws 1912, Chap. 807, Sec. 4), providing for the prevention of smoke nuisances, and subjecting to fine any person hindering inspection of engines and boilers, was recently held valid by the Supreme

Court of Rhode Island and not violative of the commerce clause of the constitution as applied to a dredge used in the navigable waters of the state.

State v. Leary, 125 Atl. 353, 354.

The language of the court expresses the principle:

> "The statute complained of was enacted in pursuance of the police power, a domain which is reserved to the states and denied to the United States government, and the act is not invalid unless it, in some way, infringes some right secured to the national government by the federal constiution. Keller v. U. S. 213 U. S. 138, 29 Sup. Ct. 470, 53 L. ed. 737, 16 Ann. Cas. 1066. The defendant admits that the regulation attempted is not over a subject national in character, requiring uniformity of regulation because affecting all states alike, and hence exclusively within the domain of the federal government (see County of Mobile v. Kimball, 102 U. S. 691, 26 L. ed. 238) but that the subject is local in character and is open to state legislation unless the federal government by congressional legislation covering the field has acted. See Escanaba Co. v. Chicago, 107 U. S. 678, 2 Sup. Ct. 185, 27 L. ed. 442.
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> "Congress has provided, merely as a safety measure, a system for the compulsory inspection of boilers, but the national government has made no regulation for the purpose of

preventing or sanctioning a smoke nuisance in the navigable tidal waters, which are a part of, and subject to the jurisdiction of a state. It would be difficult to frame a satisfactory general regulation of the subject, applicable alike to all the various navigable waters within the separate states. There is very little if any necessity for regulation of the subject in a large part of the navigable waters of many states, but the right of regulation in a small harbor located in the center of a thickly settled community is as great as on land. In the absence of action by the national government to the contrary a state may, within and over the navigable waters subject to its jurisdiction, do many things which not only regulate but impede navigation."

In Barbier v. Connolly, 113 U. S. 27, 5 Sup. Ct. Rep. 357, 28 L. ed. 923, Mr. Justice FIELD wrote:

"But neither the amendment, broad and comprehensive as it is, nor any other amendment was designed to interfere with the power of the state, sometimes termed its 'police power,' to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the state, develop its resources and add to its wealth and prosperity."

And again, in Sherlock v. Alling, 93 U. S. 99, 23 L. ed. 819, 820, the same learned justice says:

"In conferring upon Congress the regulation of commerce, it was never intended to cut the states off from legislating on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it, within the meaning of the constitution."

Authorities can be multiplied without number upon the principle contended for. Multitudinous decisions, not all of them uniform, have been handed down upon the subject. Where the courts have had difficulty, however, has not been so much in the fundamental principles involved as in their application to the particular facts, and the construction of the various statutes and ordinances under consideration.

Under point 5 of our authorities, we have collated a few of the leading cases on various phases of legislation which have been declared within the reserved powers of several states, and not in conflict with the federal constitution as a regulation of interstate commerce. A brief review of a few of these cases is illuminating.

In International Textbook Co. v. District of Columbia, 35 App. D. C. 307, it was held that a pro-

vision of the police regulations of the District of Columbia making it unlawful to scatter papers or circulars or advertising matter of any kind in such a manner as to litter the streets, was a proper exercise of the police power and not an unlawful interference with interstate commerce as applied to a foreign corporation doing business in the District, although engaged in interstate commerce.

A statute of Arkansas prescribed a minimum of three brakemen for freight trains of not more than 25 cars. This was held not an invalid regulation as applied to railroads engaged in interstate commerce.

Chicago R. I. & P. R. Co. v. Arkansas, 219 U. S. 453, 55 L. ed. 290, 31 Sup. Ct. Rep. 275.

A statute of Georgia made it unlawful to run a freight train on Sunday. This was held not an unconstitutional regulation of interstate commerce.

Hennington v. Ga., 163 U. S. 299, 16 Sup. Ct. Rep. 1086, 41 L. ed. 166.

A statute of Alabama providing certain physical qualifications for persons engaged in railroading and providing for an examination and forbidding employment of any person who did not have a certificate of fitness from the Board of Examiners, was held valid notwithstanding that

the persons affected were engaged in interstate commerce.

Nashville C. & St. L. R. Co. v. Ala., 128 U. S. 96, 32 L. ed. 352, 9 Sup. Ct. Rep. 28.

An ordinance of Philadelphia, general in its nature, limiting the speed of vehicles, was held to apply to vehicles carrying United States mails.

U. S. v. Hart, Peters C. C. (U. S. 390).

A territory may, in the exercise of its police powers, prevent common carriers from receiving for transportation, beyond the limits of the territory, hides which do not bear the required evidence of inspection.

New Mex. ex rel. v. Denver & R. G. R. Co., 203 U. S. 38, 27 Sup. Ct. Rep. 1, 51 L. ed. 78.

In the exercise of its police power to prevent the spread of infectious or contagious diseases, a state may empower its board of health to exclude healthy persons from a locality infested with contagious diseases, whether they come from within or without the state.

Compagnie Francaise, etc. v. La. State Board of Health, 186 U. S. 380, 22 Sup. Ct. Rep. 811, 46 L. ed. 1209.

A law of Ohio providing for the manufacture and sale of condensed milk from skimmed milk

was held not inoperative, because the milk was properly labeled under the national pure food and drug act and shipped into the state in interstate commerce.

Hebe Co. v. Calbert, 246 Fed. 711.

Even as to automobiles operated in interstate commerce a state statute in the absence of federal legislation on the subject is valid which imposes reasonable registration fees for the use of automobiles on the highways of the state.

Hendrick v. Maryland, 235 U. S. 610; 59 L. ed. 385; 35 Sup. Ct. Rep. 140.

Kane v. N. J., 242 U. S. 160; 61 L. ed. 222; 37 Sup. Ct. Rep. 30.

In Hendrick v. Maryland, 235 U. S. 610, (59 L. ed. 285, 391, 35 Sup. Ct. Rep. 140), Mr. Justice McREYNOLDS says:

> "In the absence of national legislation covering the subject the state may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles—those moving in interstate commerce as well as others. And to this end it may require the registration of such vehicles and the licensing of their drivers, charging therefor reasonable fees graduated according to the horse power of the engines—a practical measure of size, speed and difficulty of conrtol. This is but

an exercise of the police power uniformly recognized as belonging to the states and essential to the preservation of the health, safety and comfort of their citizens; and it does not constitute a direct or material burden on interstate commerce."

A statute of the State of New York forbade, under penalty, the heating of passenger cars in that state by stoves or furnaces kept inside the cars or suspended therefrom. This was held a valid regulation as applied to railroads engaged in interstate commrece.

N. Y., N. H. & H. R. Co. v. N. Y., 165 U. S. 628; 41 L. ed. 853, 17 Sup. Ct. Rep. 418.

A statute of Indiana provided that when the death of one is caused by the wrongful act or omission of another, the personal representative of the deceased might maintain an action against the person at fault, if the deceased might have maintained an action, had he lived, against such person for injury caused by the same act or omission. This statute was held applicable to persons engaged in interstate commerce.

Sherlock v. Alling, 93 U. S. 99; 23 L. ed. 819.

A statute requiring semi-monthly payment of railroad employes is not repugnant to the commerce clause as applied to the employes of a railroad engaged in interstate commerce.

Erie R. Co. v. Williams, 233 U. S. 685; 34 Sup. Ct. Rep. 761, 58 L. ed. 1155; 12 Am. L. Rep. 637; 51 L. R. A. (N. S.) 1097.

A statute of Ohio requiring trains to stop at towns of a certain size is not invalid as applied to trains engaged in interstate commerce.

Lakeshore & M. S. R. Co. v. Ohio ex rel. Lawrence, 173 U. S. 285; 43 L. ed. 702; 19 Sup. Ct. Rep. 465.

In Texas Transport & T. Co. v. New Orleans, 68 L. ed. Adv. Ops. 283, decided by this court February 18, 1924, the appellant was engaged in business as a steamship agency in the City of New Orleans. It represented exclusively, steamship lines engaged in interstate commerce, on a commission basis. The question was whether it was subject to a license tax of $400.00 per year imposed by the city. While holding that the interstate character of its business rendered it immune to local taxation, this court, speaking through Mr. Justice Southerland, declares that the case is a border line case. We refer to this case because it (New Orleans v. Texas Transport & T. Co., 152 La. 397, 93 So. 751) was cited by the appellee in the court below prior to its reversal by this court. We desire, however, to call the court's attention to the fact that the annual license of $400.00 levied by

the City of New Orleans was a revenue measure, and not in any sense a regulatory license, as in the instant case.

On the other hand in New York ex rel. Pa. Ry. Co. v. Knight, 192 U. S. 21, 48 L. ed. 325, 24 Sup. Ct. Rep. 202, it was held that a franchise tax imposed under New York statutes upon the Pennsylvania Railway Company for carrying on a cab service wholly within the state, for the purpose of conveying its passengers to and from its ferry landing in New York City, and charges for which were entirely separate from those for other transportation, was not an unconstitutional burden on interstate commerce but a tax upon an independent local service preliminary or subsequent to any interstate transportation.

The situation presented by the case at bar, is not dissimilar in principle, to those cases where persons engaged in interstate transportation are required by the provisions of state statutes to be examined and licensed. The leading case is Smith v. Alabama, 124 U. S. 465, 8 Sup. Ct. Rep. 564, 31 L. ed. 508. A statute of Alabama required locomotive engineers to be examined and licensed. It created a board of examiners and exacted a regulatory license fee of $5.00. It was asserted that the act requiring locomotive engineers engaged solely in interstate transportation to pay for and take out

a license before engaging in the business of interstate commerce was void. The state asserted that the statute was a police regulation for public safety and only incidentally affected interstate commerce. The statute was sustained on that principle. The court said:

> "No objection to the statute, as an impediment to the free transaction of commerce among the states, can be found in any of its special provisions. It requires that every locomotive engineer shall have a license, but it does not limit the number of persons who may be licensed nor prescribe any arbitrary conditions to the grant. The fee of $5.00 to be paid by an applicant for his examination is not a provision for raising revenue, but is no more than an equivalent for the service rendered, and cannot be considered in the light of a tax or burden upon transportation. The applicant is required, before obtaining his license, to satisfy a board of examiners in reference to his knowledge of practical mechanics, his skill in operating a locomotive engine, and his general competency as an engineer; and the board before issuing the license is required to inquire into his character and habits, and to withhold the license if he be found to be reckless or intemperate.
>
> "Certainly it is the duty of every carrier when engaged in the domestic commerce of the State or in interstate commerce, to provide and furnish itself with locomotive engineers

of this precise description, competent and well qualified, skilled and sober; and if, by reason of carelessness in the selection of an engineer not so qualified, injury or loss is caused, the carrier, no matter in what business engaged, is responsible according to the local law admitted to govern in such cases, in the absence of congressional legislation.

"The statute in question further provides that any engineer licensed under the Act shall forfeit his license if at any time found guilty, by the board of examiners, of an act of recklessness, carelessness or negligence, while running an engine, by which damage to person or property is done, or who shall immediately preceding or during the time he is engaged in running an engine be in a state of intoxication; and the board is authorized to revoke and cancel the license whenever they shall be satisfied of the unfitness or incompetency of the engineer by reason of any act or habit unknown at the time of his examination, or acquired or formed subsequent to it. The eighth section of the Act declares that any engineer violating its provisions shall be guilty of a misdemeanor, and upon conviction inflicts upon him the punishment of a fine not less than $50 nor more than $500, and also that he may be sentenced to hard labor for the county for not more than six months.

"If a locomotive engineer, running an engine, as was the petitioner in this case, in the

business of transporting passengers and goods between Alabama and other States, should, while in that State, by mere negligence and recklessness in operating his engine, cause the death of one or more passenggers carried, he might certainly be held to answer to the criminal laws of the State if they declare the offense in such a case to be manslaughter. The power to punish for the offense after it is committed certainly includes the power to provide penalties directed, as are those in the statute in question, against those acts of omission which, if performed, would prevent the commission of the larger offense.

"It is to be remembered that railroads are not natural highways of trade and commerce. They are artificial creations; they are constructed within the territorial limits of a state, and by the authority of its laws and ordinarily by means of corporations exercising their franchises by limited grants from the State. The places where they may be located, and the plans according to which they must be constructed, are prescribed by the legislation of the State. Their operation requires the use of instruments and agencies attended with special risks and dangers, the proper management of which involves peculiar knowledge, training, skill, and care. The safety of the public in person and property demands the use of specific guards and precautions. The width of the guage, the char-

acter of the grades, the mode of crossing streams by culverts and bridges, the kind of cuts and tunnels, the mode of crossing other highways, the placing of watchmen and signals at points of special danger, the rate of speed at stations and through villages, towns, and cities, are all matters naturally and peculiarly within the provisions of that law from the authority of which these modern highways of commerce derive their existence. The rules prescribed for their construction and for their management and operation, designed to protect persons and property, otherwise endangered by their use, are strictly within the limits of the local law. They are not per se regulations of commerce; it is only when they operate as such in the circumstances of their application, and conflict with the expressed or presumed will of Congress exerted on the same subject, that they can be required to give way to the supreme authority of the constitution."

The foregoing cases disclose the wide scope of the police powers reserved to the state in matters of local import. The principle of law upon which these cases is based, is clear enough. The problem is not one of definition but of application and the question before this court is, does this particular enactment of the City of Portland transcend the limits of the city's power?

A presumption may and should be indulged in that a statute was enacted in good faith for any of the purposes for which the police power can be exercised. The declared purpose of the act is to be accepted as true unless incompatible with its meaning and effect. Mr. Justice DAY in Flint vs. Stone-Tracey Co., 220 U. S. 107, 55 L. ed. 389, 411, 31 Sup. Ct. Rep. 342, said:

> "While the mere declaration contained in a statute that it should be regarded as a tax of a particular character does not make it such if it is apparent that it cannot be so designated consistently with the meaning and effect of the act, nevertheless a declaration of the law-making power is entitled to much weight, * * *"

It was contended by the appellant in the court below, and will undoubtedly be contended here, that the real purpose of the ordinance is to discriminate against non-resident manufacturers in favor of local business. There is absolutely nothing in the language of the ordinance to justify such a contention, nor is there any allegation in the bill upon which to base such a claim. The ordinance in its operation, without discrimination affects all persons alike whether they be the solicitors of a local concern, or of a concern engaged in interstate or foreign commerce.

It is not alleged nor has appellant at any time claimed, that the ordinance has been administered, or is being administered with an unequal hand, so as practically to make discriminations against non-resident manufacturers. See Yick Wo vs. Hopkins, 118 U. S. 356, 30 L. ed. 202, 6 Sup. Ct. Rep. 1064.

The declared purpose of the ordinance is to prevent the perpetration of fraud upon the citizens of the City of Portland by fraudulent or irresponsible solicitors. It is not aimed at any individual, firm or corporation. It is not aimed at anything which is the subject of trade or commerce. It does not discriminate against the goods of the State of Indiana, of which appellant is a resident, or of any other state. It does not interfere in any way with the free intercourse in goods of a sister state, nor does it interfere, except in an indirect and incidental manner, with the contract for the sale of such goods. It is aimed solely, at fraudulent practices of such a nature that they are necessarily of a *local* and not of a national character. When a citizen of the City of Portland is defrauded by a solicitor, it is evidently a matter for the local authorities or for the local courts, if perchance they may be so fortunate as to be able to lay their hands upon the illusive individual committing the fraud or other offense. Usually such frauds and practices are

perpetrated upon persons of limited means and in such small amounts in any individual case as to render the remedy furnished by the local courts of little or no avail. Or too often the solicitor is beyond the reach of the local courts and his principal is thousands of miles away. The defrauded citizen is as effectively without a remedy as if the law furnished none. These are facts of such notoriety that this court is justified in taking judicial notice of them.

It would seem, not only within the power of the state, to legislate for the prevention of such frauds upon its citizens but it would seem its positive duty to devise some method for reaching the evils of a system so freighted with opportunities for fraudulent practices. The system is enlarging in its scope from year to year. The tendency, today, is to eliminate the middle man entirely. This may be well enough, but the system has built up an immense business in soliciting which is practically the only business of that character which is unregulated and unrestricted. For years individulas, engaged in soliciting for non-resident principals, have successfully hidden behind the provisions of the federal constitution, and it has prevented legislation designed to reach solicitors of local concerns because of the inequality of such a measure. Undoubtedly congressional inaction is expressive of its will that such busi-

ness, so far as its national aspects are concerned, shall be free and unrestricted, but the states should not be thus hindered from regulating it in its local aspects. Local authority, only, can effectively deal with such a situation. It is said in Plumley vs. Massachusetts, 155 U. S. 461, 15 Sup. Ct. Rep. 154, 39 L. ed. 223:

> "The constitution of the United States does not secure to anyone the privilege of defrauding the public."

Preventive measures are of infinitely greater benefit to society than an uncertain criminal or civil process, after the damage is done.

As was observed by the Court in Standard Home Co. vs. Davis, 217 Fed. 904:

> "Experience has demonstrated the fact that some of the grossest frauds have been perpetrated on the public by investment companies by extravagant expenditures for salaries, agents' commissions, and other apparently legitimate purposes through officers who had practically nothing invested in the association, and whose character and reputation stamped them as adventurers and cheats. Such regulations are proper and wholesome. The dockets of the national courts have been crowded for the last few years with criminal prosecutions of persons charged with the use of the mails of the United States in carrying out fraudulent

schemes by so-called investment companies and persons offering allurements to get rich quick. But those courts are only clothed with jurisdiction to prosecute those who, in carrying out their fraudulent schemes, make use of the mails, and then only after the commission of the offense. This necessarily affects only a small portion of those engaged in such schemes and can in no wise act as a preventative. The states alone can provide for the prevention and punishment of all who commit fraud, although the mails are not used for their accomplishment, and enact laws to prevent the commission of these crimes. Legislation to prevent crime is of greater benefit to society than the punishment of the offender after the crime has been committed and innocent persons have been made to suffer. Statutes enacted for such purposes ought not to be declared invalid by the courts upon slight grounds, evén if extreme cases can be imagined where they may work an injustice."

Mr. Freund in his work on Police Power, Sec. 272, page 260, upon the subject of protection against fraud and preventive measures against fraud, states:

"The private and the criminal law as well as the police power undertake to afford protection against fraud. They deal, however, with fraudulent practices only by remedial relief, treating a transaction as void or setting it aside, giving a claim for damages or inflict-

ing a penalty after the fraud has been committed. In either case the element of fraudulent intent is essential. The police power attempts to give an ampler protection both by adopting precautionary measures and by forbidding certain practices irrespective of an actual intent to defraud. It does not in the first instance punish fraud, but prescribes regulations and punishes their violation. The intervention of the law proceeds upon the theory that every one who invites the confidence of the public may be compelled to submit to such regulations as will guard the public as far as possible against misapprehension. Where the confidence of the public is invited to an exceptional degree, the regulations may be made specially stringent, on the ground that the business is affected with a public interest."

Beginning with Anglo-Saxon times and even forming a part of the Magna Charta, legislation for the prevention of fraud was enacted concerning weights and measures, inspection laws, legislation providing preventive measures against substitutes, imitations and adulterations. All of this legislation was designed to prevent fraud being perpetrated upon the public. The operation of the police power where it is intended to prevent deception is well illustrated by the decisions of this court relative to statutes dealing with oleo-

margarine. The hostility of the dairy interests throughout the country brought about legislation against the manufacture of oleomargarine. In Schollenberger vs. Pennsylvania, 171 U. S. 1, 43 L. ed. 49, 18 Sup. Ct. Rep. 759, this court held that while the legislative policy of the state of Pennsylvania prohibiting the manufacture of oleomargarine was exclusive as to domestic manufacture and sale, it could not extend to interstate commerce and that such legislation could not prevent the importation of pure oleomargarine into the state of Pennsylvania or its sale therein in original packages.

However, in the State of Massachusetts the legislation against oleomargarine took a different course. The statute of Massachusetts prohibited the sale of oleomargarine in that state when colored in imitation and semblance of yellow butter by an addition of ingredients changing its natural color. This prohibition was recognized as valid by this court in the case of Plumley vs. Massachusetts, 155 U. S. 461, 15 Sup. Ct. Rep. 154, 39 L. ed. 223, and this case has ever since been recognized as the leading authority on the subject of the power of the state to legislate in the interests of protecting its citizens from fraud and deception, and that freedom of commerce among the states does not demand a recognition of the right to

practice fraud or deception upon the public in the sale of any article, even though that article may be the subject of interstate commerce.

It was not contended in that case that the coloring matter was unhealthful, but the decision is based, solely, upon the ground that the public may be deceived by the appearance of the oleomargarine to purchase the same believing it to be butter. We quote from the language of Mr. Justice HARLAN in that case:

> "It has therefore been adjudged that the states may legislate to prevent the spread of crime, and may exclude from their limits paupers, convicts, persons likely to become a public charge, and persons afflicted with contagious or infectious diseases. These and other like things having immediate connection with the health, morals, and safety of the people, may be done by the states in the exercise of the right of self-defense. And yet it is supposed that the owners of a compound which has been put in a condition to cheat the public into believing that it is a particular article of food in daily use and eagerly sought by people in every condition of life, are protected by the Constitution in making a sale of it against the will of the state in which it is offered for sale, because of the circumstance that it is in an original package, and has become a subject of ordinary traffic. We are unwilling to accept this view. We are of the

opinion that it is within the power of a state to exclude from its markets any compound manufactured in another state, which has been artificially colored or adulterated so as to cause it to look like an article of food in general use, and the sale of which may, by reason of such coloration or adulteration, cheat the general public into purchasing that which they may not intend to buy. The Constitution of the United States does not secure to any one the privilege of defrauding the public. The deception against which the statute of Massachusetts is aimed is an offense against society; and the states are as competent to protect their people against such offenses or wrongs as they are to protect them against crimes or wrongs of more serious character. And this protection may be given without violating any right secured by the national Constitution, and without infringing the authority of the general government. A state enactment forbidding the sale of deceitful imitations of articles of food in general use among the people does not abridge any privilege secured to citizens of the United States nor, in any just sense, interfere with the freedom of commerce among the several states. It is legislation which 'can be most advantageously exercised by the states themselves.' "

In Crossman vs. Lurman, 192 U. S. 189, 24 Sup. Ct. Rep. 234, 48 L. ed. 401, a statute of New York

prohibited the sale of any adulterated food or drug. Food was to be considered as adulterated within the meaning of the act "if it be colored or coated, or polished or powdered, whereby damage is concealed, or it is made to appear better than it really is or of greater value." It was held that this did not violate the commerce clause of the federal constitution but was a valid exercise of the police power of the state for the benefit of the people in the prevention of fraud and deception.

In the case of Savage vs. Jones, 225 U. S. 501, 32 Sep. Ct. Rep. 715, 56 L. ed. 1182, a statute of Indiana fixed a prescribed standard and required an inspection of "concentrated commercial feeding stuff" before its sale in the state, and the affixing of a stamp to each package as evidence of inspection, and forbade, under penalty, the sale of any such article not so inspected. Suit was brought to enjoin enforcement of the statute and among other things it was claimed that the law violated the commerce clause of the constitution. In upholding the statute Mr. Justice HUGHES says:

> "The evident purpose of the statute is to prevent fraud and imposition in the sale of food for domestic animals—a matter of great importance to the people of the state. Its requirements were directed to that end, and

> they were not unreasonable. It was not aimed at interstate commerce, but, without discrimination, sought to promote fair dealing in the described articles of food."

The principle of these cases has been followed a number of times by this court with reference to the introduction and sale, in a state, of securities, when the "blue sky" legislation of a number of states came before this court, on the basis of their interference with the powers granted to the federal government by the constitution. The leading case, on this subject, is Hall vs. Geiger-Jones Co., 242 U. S. 539, 61 L. ed. 480, 37 Sup. Ct. Rep. 217. In this case it was held that congressional inaction leaves the state free to impose such an indirect or incidental burden on interstate commerce as may result from the provisions of a state statute forbidding dealers from disposing of, or offering to dispose of, corporate securities with in the state, without first having obtained a license from a specified state official. The language of this decision is squarely in point and is applicable to the ordinance here in question. Mr. Justice McKENNA said:

> "The next contention of appllees is that the law under review is a burden on interstate commerce and therefore contravenes the commerce clause of the constitution of the United States. There is no doubt of the su-

premacy of the national power over interstate commerce. Its inaction, it is true, may imply prohibition of state legislation, but it may imply permission of such legislation. In other words, the burden of the legislation, if it be a burden, may be indirect and valid in the absence of the assertion of the national power. So much is a truism; there can only be controversy about its application. The language of the statute is: 'Except as otherwise provided in this act, no dealer shall, within this state dispose' of certain securities 'issued or executed by any private or quasi public corporation, copartnership or association (except corporation not for profit) * * * without first being licensed so to do as hereinafter provided.'

"The provisions of the law, it will be observed, apply to dispositions of securities within the state, and while information of those issued in other states and foreign countries is required to be filed (Sec. 6373-9), they are only affected by the requirement of a license of one who deals in them within the state. Upon their transportation into the state there is no impediment—no regulation of them or interference with them after they get there. There is the exaction only that he who disposes of them there shall be licensed to do so, and this only that they may not appear in false character and impose an appearance of a value which they may not possess—and this certainly is only an indirect

burden upon them as objects of interstate commerce, if they may be regarded as such. It is a police regulation strictly, not affecting them until there is an attempt to make disposition of them within the state. To give them more immunity than this is to give them more immunity than more tangible articles are given, they having no exemption from regulations the purpose of which is to prevent fraud or deception. Such regulations affect interstate commerce in them only incidently. (Citing authorities).

"We might, indeed, ask, 'When do the designated securities cease migration in interstate commerce and settle to the jurisdiction of the state?' Material things, choses in possession, pass out of interstate commerce when they emerge from the original package Do choses in action have a longer immunity? It is to be remembered that though they may differ in manner of transfer, they are in the same form in the hands of the purchaser as they are in the hands of the seller, and in the hands of both as they are brought into the state. We ask again, 'Do they never pass out of interstate commerce? Have they always the freedom of the state? Is there no point of time at which the state can expose the evil that they may mask? Is anything more necessary for the supremacy of the national power than that they be kept free when in actual transportation, subject to the jurisdiction of the state only when they are attempted

to be sold to the individual purchaser?' The questions are pertinent, the answer to them one way or the other, of consequence; but we may pass them, for, *regarding the securities as still in interstate commerce after their transportation to the state is ended and they have reached the hands of dealers in them, their interstate character is only incidentally affected by the statute.*"

The holding of this case was reaffirmed by the court in Merrick vs. Halsey & Co., 242 U. S. 568, 37 Sup. Ct. Rep. 227, 61 L. ed. 498, wherein the "blue sky" law of Michigan was in question as to its being in conflict with both the commerce clause and the 14th Amendment, and it was again reaffirmed in the case of Caldwell vs. Sioux Falls Stock Yards Co., 242 U. S. 559, 37 Sup. Ct. Rep. 224, 61 L. ed. 493, in which case the same questions were raised and decided.

We conclude from these cases that in the absence of national legislation a state statute, or municipal ordinance, designed to prevent fraudulent practices or fraudulent representations, is a valid exercise of the police power of the state in the interests of the local welfare, notwithstanding that the articles affected are articles of commerce and that interstate commerce is indirectly affected or burdened thereby. The fraud which the ordinance in question seeks to prevent is es-

sentially a local matter and even though the act of soliciting may be an incident of interstate commerce, the indirect burden placed thereon by the ordinance does not contravene the commerce clause of the constitution. The provisions of the ordinance are reasonably adaptabled to accomplish the purpose intended to be accomplished, and of bringing about a correction of this evil. The requirement of a bond insures the continuance in business of persons of character and responsibility only. The ordinance should be an assistance to commerce rather than a hindrance or burden thereon, by eliminating the dishonest solicitor. The manufacturer and the honest solicitor doing business in this method, should not be heard to object to such a safeguard. It serves a double purpose. It protects the manufacturer and the honest solicitor against the dishonest solicitor, and assures the customer that his deposit is protected. This should be a selling point in favor of the licensed solicitor.

The ordinance has to do with *conduct* not directly connected with any subject of commerce. There is nothing new in the principle that the personnel of business may be regulated on the basis of character and conduct.

Gundling v. Chicago, 177 U. S. 183, 20 Sup. Ct. Rep. 633, 44 L. ed. 725.

Bratton v. Chandler, 260 U. S. 110, 67 L. ed. 157.

Conduct of individuals is not a subject of interstate commerce. It is purely a matter of local import, and its regulation a subject of the local police power.

After diligent search we have found but one case construing a statue in any degree similar to the ordinance in question.

Musco v. United Surety Co., 196 N. Y. 459, 90 N. E. 171, 134 Am. St. Rep. 851.

In that case a statue of New York (Chap. 185, Laws 1907) entitled, "An Act to regulate the taking of deposits by certain persons, firms and corporations," provided:

> "All corporations, firms and persons now or hereafter engaged in the selling of steamship or railroad tickets for transportation to or from foreign countries, who in conjunction with said business of receiving deposits of money for the purpose of transmitting the same, or the equivalent thereof to foreign countries, shall, before entering into said business or before continuing said business, except as hereinbefore provided, make, execute and deliver a bond to the people of the State of New York in the sum of fifteen thousand dollars, conditioned for the faithful holding and transmission of any money, or the equivalent thereof which shall be delivered to it or them for transmission to a foreign country."

The Supreme Court of New York sustained this law as against the contention that it violated the interstate commerce clause of the federal constitution. We quote the language of the court in 134 Am. St. Rep. 855:

> "It applies to the act of receiving on deposit moneys to be transmitted some time in the future, and it is perfectly clear that great opportunity for fraud and loss would arise in connection with these deposits which were withdrawn from the observation and custody of the depositor on a promise at some time in the future to transmit them, and that it was the intent of the legislature to guard against the embezzlement or loss even by ignorance on the part of the banker of these moneys pending the proposed subsequent transmission. The acts of receiving the deposits and of subsequently transmitting them, although they may be related, are still entirely distinct.
>
> "The authority amongst the cases called to our attention which seems most nearly to fit the facts in this case is that of Williams v. Fears, 179 U. S. 270, 21 Sup. Ct. Rep. 128, 45 L. ed. 186. That case presented for consideration the act of the state of Georgia whereby a specific tax was levied upon the occupation of 'immigrant agent,' meaning a person engaged in hiring laborers within the state, but to be transported and employed beyond its limits, and it was held that the levy of this tax did not amount to such an interference

with the freedom of transit or of contract as to violate the federal constitution.

"It is doubtless true that this statute regulating the receipt of deposits may incidentally and indirectly affect the business of transmitting moneys abroad. But it is well settled that the law, although in a limited degree affecting interstate commerce, is not for that reason a needless intrusion upon the federal jurisdiction or strictly a regulation of interstate commerce, but is to be considered as an ordinary police regulation and therefore not invalid: Hennington v. Georgia, 163 U. S. 299, 16 Sup. Ct. Rep. 1086, 41 L. ed. 166."

This ordinance is not distinguishable in principle from the law of Georgia which was the subject of the decision in the case of Western Union Telegraph Co. v. James, 162 U. S. 650, 16 Sup. Ct. Rep. 934, 40 L. ed. 1105, wherein it was provided that "every electric telegraph comppany with a line of wires, wholly or partly in this state, and engaging in telegraphing for the public, shall during the usual office hours, receive despatches whether from other telegraph lines or from individuals; and, on payment of the usual charges according to the regulation of such company, shall transmit and deliver the same with impartiality and good faith and with due diligence under penalty of $100, which penalty may be recovered by suit in a justice or other court having jurisdiction thereof, etc."

Suit was brought agains the plaintiff in error to recover the statutory penalty for failure to promptly deliver a telegraphic despatch. Mr. Justice PECKHAM, after carefully reviewing the decisions of this court relative to the transmission of messages in interstate commerce, comes to this conclusion:

> "While it is vitally important that commerce between the states should be unembarrassed by vexations state regulations regarding it, yet on the other hand there are many occasions where the police power of the state can be properly exercised to insure a faithful and prompt performance of duty within the limits of the state upon the part of those who are engaged in interstate commerce. We think the statue in question is one of that class, and in the absence of any legislation by Congress the statue is a valid exercise of the power of the state over the subject."

We cannot distinguish the principle involved in these cases from the principle involved in the case at bar.

DOES ORDINANCE VIOLATE 14TH AMENDMENT?

Reasonableness of Ordinance.—The bill alleges that the ordinance offends against the 14th Amendment, (Transcript of Record, page 6.) This point was not seriously urged in the court below, and we do not believe it will be seriously urged here. We are laboring at some disadvantage in not having before us a copy of appellant's brief and we are to some degree compelled to anticipate what arguments may be advanced. It was, however, argued below that the ordinance was unreasonable, that honest business should not be burdened because of the happening of an occasional fraud, and that fraud was not incidental to the business of soliciting. Mr. Justice McKENNA in Merrick v. Halsey & Co., 242 U. S. 568, 37 Sup. Ct. Rep. 227, 61 L. ed. 498, so fully answers these contentions that we quote at length from his language in that case, (61 L. ed., page 509):

> "It burdens honest business, it is true, but burdens it only that, under its forms, dishonest business may not be done. This manifestly cannot be accomplished by mere declaration; there must be conditions imposed and provision made for their performance. Expense may thereby be caused and inconvenience, but to arrest the power of the state by such considerations would make it impotent to discharge its function. It costs something to be governed.

"But counsel say that the conditions imposed either are not adequate to such purpose or transcend what is necessary for it. Indeed, it is asserted that the statute has not that purpose, 'but rather to prevent financial loss.' The assertion is against the declaration of the title of the statute and against the words of its body, and cannot be justified by assigning to it the purpose of the law which it amends; nor can we assent to the contention that such purpose must be inferred from Sec. 8 or other provisions which point, it is said, to the probability of financial loss, not fraud. The act must be considered from its declared purpose and as a whole, not from detached portions which can be easily overwhelmed when assigned a false character.

"It is, however, said that, assuming the statute have such purpose, the fraud referred to is not a proper object for the police power, and it is asked, 'Can the occasional fraud, that fraud which arises in the individual transaction, justify a law regulating the business of which the single transaction is a part? Or must it be fraud which is incidental to the business,—a fraud which the business itself, from its character and the manner in which it is generally conducted, invites and encourages?' And, quoting from People ex rel, Tyroler v. Warden, 157 N. Y. 116, 43 L. R. A. 264, 68 Am. St. Rep. 763, 51 N. E. 1006: 'It is a novel legislation, indeed, that attempts to take away from all the people the right to conduct a

business because there are wrongdoers in it.' To the latter we say the right to do business is not taken away; the other we have already answered and need only add that we cannot, upon such considerations, limit the power of the state. The state must adapt its legislation to evils as they appear, and is not helpless because of their forms.

"Engel v. O'Malley, 219 U. S. 128, 55 L. ed. 128, 31 Sup. Ct. Rep. 190, was not decided because fraud was incidental to the business of banking by individuals or partnerships, but because fraud could be practiced in it, and that hence it could be licensed. Nor was it decided in Allen v. Riley, 203 U. S. 347, 51 L. ed. 216, 27 Sup. Ct. Rep. 95, 8 Ann. Cas. 137, that the transfer of patent rights was of itself illegal, or that any particular transfer would be deceptive, but that some transfers might be; and so a statue of Kansas which required any person selling or offering to sell such rights to conform to certain requirements was declared valid. Nor did we hesitate to hold valid the regulation of the business of employment agencies. It was a lawful business and would not in instances be injuriously conducted; but in instances it might be, and because it might be, with injurious consequences, its regulation was provided. This court sustained the regulation and the condition that it was to be enforced according to the legal discretion of a commissioner. Brazee v. Michigan, 241 U. S.

340, 60 L. ed. 1034, 36 Sup. Ct. Rep. 561. See also Brodnax v. Missouri, 219 U. S. 285, 55 L. ed. 219, 31 Sup. Ct. Rep. 238."

Cost and Inconvenience—The mere fact that appellant's solicitors may suffer some cost and inconvenience is no argument against the ordinance (if such a question can be raised by appellant). It has been held by this court many times that cost and inconvenience would have to be very great before they could become an element in the consideration of the right of a state to exert its reserved power or its police power.

Erie R. Co. v. Williams, 233 U. S. 685, 58 L. ed. 1155, 34 Sup. Ct. Rep. 761.

New York & N. E. R. Co. v. Bristol, 151 U. S. 556, 38 L. ed. 269, 14 Sup. Ct. Rep. 437.

U. S. v. Union P. R. Co., 160 U. S. 1, 40 L. ed. 319, 16 Sup. Ct. Rep. 190.

St Louis & I. M. & S. R. Co. v. Paul, 173 U. S. 404, 43 L. ed. 746, 19 Sup. Ct. Rep. 419.

Wisconsin M. & P. R. Co. v. Jacobson, 179 U. S. 287, 45 L. ed. 194, 21 Sup. Ct. Rep. 115.

Reasonableness of Classification—Appellant further alleges in the bill that the ordinance discriminates against solicitors who demand and accept money in advance of delivery in favor of those who do not and that such classification is unreasonable and denies to the appellant the equal protection of the law. As we have heretofore

pointed out, the ordinance is aimed at abuses arising out of the collection of money in advance by solicitors. Solicitors doing business in this manner stand in a class by themselves and the evil which the ordinance is designed to remedy does not exist as to those solicitors who do not receive money in advance of delivery. To hold that this classification is improper because it does not include other solicitors, would be to defeat the very object of the ordinance.

There is nothing in the constitution of the United States which forbids classification of subjects for the purpose of legislation.

Barbier v. Connolly, 113 U. S. 27, 5 Sup. Ct. Rep. 357, 28 L. ed. 923.

Atchison T. & S. F. R. Co. v. Mathews, 174 U. S. 96, 43 L. ed. 909, 19 Sup. Ct. Rep. 609.

The legislation of a state and likewise a municipality in carrying out the objects intended to be accomplished by legislation may make discriminations if founded on distinctions which are not unreasonable or purely arbitrary.

Quong Wing v. Kirkendall, 223 U. S. 59, 32 Sup. Ct. Rep. 192, 56 L. ed. 350, 351.

Rast v. Van Deman & Lewis Co., 240 U. S. 342, 60 L. ed. 679, 36 Sup. Ct. Rep. 370.

Tanner v. Little, 240 U. S. 369, 60 L. ed. 691, 36 Sup. Ct. Rep. 379.

In Barbier v. Connolly, 113 U. S. 27, 5 Sup. Ct. Rep. 357, 28 L. ed. 923, Mr. Justice FIELD, says:

> "Class legislation discriminating against some and favoring others is prohibited but legislation which in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment." (14th Amendment).

In Tanner v. Little, 240 U. S. 369, 36 Sup. Ct. Rep. 379, 60 L. ed. 691, Mr. Justice McKENNA says:

> "Classification is not different in law than other departments of knowledge. 'It is the grouping of things in speculation or practice because they agree with one another in certain particulars.' (Citing authorities). Upon what differences or resemblances it may be exercised depends necessarily upon the object in view, may be narrow or wide according to that object."

In Quong Wing v. Kirkendall, 223 U. S. 59, 32 Sup.. Ct. Rep. 192, 56 L. ed. 350, a statute of Montana regulating a laundry business exempted from its operation steam laundries and women engaged in the laundry business where not more than two women were employed. This was held by Mr. Justice Holmes to be a valid classification, the Court saying:

"* * * The 14th Amendment does not interfere by creating a fictitious equality where there is a real difference. The particular points at which the difference should be emphasized by legislation are largely in the power of the state."

In Ozan Lbr. Co. v. Union County National Bank, 207 U. S. 251, 28 Sup. Ct. Rep. 89, 52 L. ed. 195, a law of Arkansas which exempted merchants and dealers who sell patented articles in the usual course of business, from provisions requiring a negotiable instrument taken in payment for a patented article to show on its face for what it was given, or be void, was held by this Court not repugnant to the 14th Amendment, the Court saying:

"It is almost impossible, in some matters, to foresee and provide for every imaginable and exceptional case, and a legislature ought not to be required to do so at the risk of having its legislation declared void, although appropriate and proper upon the general subject upon which such legislation is to act, so long as there is no substantial and fair ground to say that the statute makes an unreasonable and unfounded general classification, and thereby denies to any person the equal protection of the laws. In a classification for governmental purposes there cannot be an exact exclusion or inclusion of persons and things."

In Heath & Milligan Mfg. Co. v. Worst, 207 U. S. 338, 28 Sup. Ct. Rep. 114, 52 L. ed. 236, a statute of North Dakota required certain paints to be labeled and exempted other paints. In holding this law valid as against the complaint that it violated the 14th Amendment, Mr. Justice McKENNA remarks:

> "Legislation which regulates business may well make distinctions depend upon the degrees of evil without being arbitrary or unreasonable."

In Engel v. O'Malley, 219 U. S. 128, 31 Sup. Ct. Rep. 190, 55 L. ed. 129, a law of New York licensing private bankers exempted from its operation those private bankers in whose business the average amount of each sum received, was not less than $500.00 and those who gave a bond in a specified amount. This was held to be a valid classification, the Court saying:

> "But the former of these exceptions has a manifest purpose to confine the law as nearly as may be to the class thought by the legislation to need protection, and the latter merely substitutes a different form of security, as well it may. 'Legislation which regulates business may well make distinctions depend upon the degree of evil.' "

There is a multitude of other cases holding that there must be great freedom of discretion in the

legislative body in the matter of classification, even though it may result in ill-advised, unequal and oppressive legislation.

Mobile County v. Kimball, 102 U. S. 691, 26 L. ed. 238.

License Fee—The question of the license fee is of secondary importance. That provision will stand or fall with the rest of the ordinance. If this ordinance is within the powers of the City of Portland, it will not be contended that a reasonable regulatory license fee may not be exacted. In many of the cases considered in this brief where state regulations requiring licenses or inspection, were questioned, the question of a license fee and the amount thereof was involved. In Smith v. Alabama, 124 U. S. 465, 8 Sup. Ct. Rep. 564, 31 L. ed. 508, above referred to, where locomotive engineers engaged in interstate commerce were required to be examined and licensed by the provisions of the law of Alabama, a license fee of $5.00 was exacted. In Hendrick v. Maryland, 235 U. S. 610, 59 L. ed. 285, 35 Sup. Ct. Rep. 140, involving the licensing of automobiles engaged in interstate transportation, the question of a license fee was involved. Likewise in Kane v. New Jersey. 242 U. S. 160, 61 L. ed. 222, 37 Sup. Ct. Rep. 30.

In Patapsco Guano Co. v. Board of Agriculture,

171 U. S. 345, 43 L. ed. 191, 18 Sup. Ct. Rep. 862, a state statute imposing an inspection fee of 25 cents per ton was held valid. Many other cases are to the same effect.

Amount of License Fee—So far as the amount of the fee charged is concerned, that is a question for the legislative body of the city and not for the courts, so long as it is not so unreasonable and disproportionate as to serve to open it to attack on the question of good faith. As stated by Judge McQUILLIN in Municipal Corporations, Vol. 3, page 2230:

> "The sound judicial view is that much should be left to the discretion of the municipal authorities. Where under undoubted charter power, the tax is imposed for revenue alone, or for police regulation and revenue, the amount thereof is usually a matter for determintion by the legislative branch of the municipal government. Ordinarily the courts will decline to interfere on the ground that the amount is oppressive or unreasonably large. They incline to defer to the judgment and discretion of the corporate authorities, and frequently presume that the amount demanded is reasonable, particularly in the absence of evidence to the contrary."

In Hendrick v. Maryland, 235 U. S. 610, 57 L. ed. 385, 35 Sup. Ct. Rep. 140, it is said:

"The amount of the charges and the method of collecting are primarily for determination by the state itself; and so long as they are reasonable and are fixed according to some uniform, fair and practical standard they constitute no burden on interstate commerce. * * *The action of the state must be treated as correct unless the contrary is made to appear. In the instant case there is no evidence concerning the value of the facilities supplied by the state, the cost of maintaining them or the fairness of the methods adopted by collecting the charges imposed; and we cannot say from a mere inspection of the statutes that its provisions are arbitrary or unreasonable."

In New Mexico ex rel. McLean v. D. & R. G. R. R. Co., 203 U. S. 38, 27 Sup. Ct. Rep. 1, 51 L. ed. 78, it is said:

"The law being otherwise valid the amount of the inspection fee is not a judicial question; it rests with the legislature to fix the amount and it can only present a valid objection when it is shown that it is so unreasonable and disproportionate to the services rendered as to attack the good faith of the law." (Citing Patapsco Guano Co. v. Board of Agriculture, 171 U. S. 345-350, 43 L. ed. 191-193, 18 Sup. Ct. Rep. 862).

In Atlantic & Pacific Telegraph Co. v. Philadelphia, 190 U. S. 160, 23 Sup. Ct. Rep 817, 47 L. ed. 995, this court says:

> "When it (the license tax) is authorized only in support of police supervision, the expense of such supervision determines the amount of the charge; and, if it were possible to prove in advance the exact cost, that would be the limit of the tax. In the nature of things, that, however, is ordinarily impossible; and so the municipality is at liberty to make the charge large enough to cover any reasonable anticipated expenses."

It is not apparent that the amount of the license fee in the present case is so unreasonable and disproportionate as to serve to open it to attack on the question of good faith. The city is entitled, under these authorities, to make the charge large enough to cover the cost and any reasonable anticipated expenses, taking into consideration the difficulty encountered in keeping persons of this character, wondering from one portion of the city to the other, under observation, together with the expense of supervising, the issuance of licenses and the expense thereof, it cannot be said that the fee charged is unreasonable.

The Drummer Cases. We anticipate that great reliance will be placed by the appellant upon the so-called Drummer Cases in this court, as was the case in the lower court and we, therefore, wish to distinguish those cases and the laws upon which they were based from the instant case and the ordinance of the City of Portland here in question.

Decisions affecting drummers, solicitors, agents, brokers, canvassers and peddlers, are numerous. Upon examination of all the cases it will be found that in every instance where the court declared a statute or ordinance void as interfering directly with interstate commerce, the legislature imposed a direct property tax or an excise tax or a privilege tax, or an occupation tax or a sales tax, a gross receipt tax, or a direct tax upon the property moving in interstate commerce. It would be an imposition on the time of the court to undertake to discuss every case. We content ourselves with taking up for discussion for the purpose of differentiation, only, those decisions which are deemed as leading cases on the points involved in the instant case. We do this because great reliance in both of the lower courts was placed by appellant on such cases.

In Brown v. Maryland, 12 Wheat. 419, 6 L. ed. 678, an act of the legislature required all importers of foreign goods, by the bale or package, and all persons selling the same by wholesale to take out a license. Chief Justice Marshall held that a tax on the sale of an article imported only for sale was a tax on the article itself; that it was an occupation tax on the importer.

Walling v. Michigan, 116 U. S. 446, 29 L. ed. 691, 6 Sup. Ct. Rep. 454, involved a tax in Michigan on

persons engaged in the business of selling liquors at wholesale, or of soliciting or taking orders for such liquors to be shipped into the state, not having their principal place of business in the state, without imposing the same tax on persons engaged in the same business in the state. The court held it void as interfering with interstate commerce. The distinction we draw in the case at bar is clearly pointed out by Justice Bradley in the Michigan case, when he said:

> "It is suggested by the learned judge who delivered the opinion of the supreme court of Michigan in this case, that the tax imposed by the Act of 1875 is an exercise by the legislature of Michigan of the police power of the state for the discouragement of the use of intoxicating liquors, and the preservation of the health and morals of the people. This would be a perfect justification of the act if it did not discriminate against the citizens and products of other states in a matter of commerce between the states, and thus usurp one of the prerogatives of the national legislature."

Robbins v. Taxing District of Shelby County, 120 U. S. 489, 30 L. ed. 694, 1 Inters. Com. Rep. 45, 7 Sup. Ct. Rep. 592, was decided subsequently to the Missouri case and is now regarded as the one leading case upon the principles here involved. There was an agreed statement of facts as follows:

> "Sabine Robbins is a citizen and resident

of Cincinnati, Ohio, and on the .... day of ....., 1884, was engaged in the business of drumming in the Taxing District of Shelby County, Tenn., i. e. soliciting trade by the use of samples for the house or firm for which he worked as a drummer, said firm being the firm of 'Rose, Robbins & Co.,' doing business in Cincinnati, and all the members of said firm being citizens and residents of Cincinnati, Ohio. While engaged in the act of drumming for said firm, and for the claimed offense of not having taken out the required license for doing said business, the defendant, Sabine Robbins, was arrested by one of the Memphis or Taxing District police force and carried before the Hon. D. P. Hadden, president of the Taxing District, and fined for the offense of drumming without a license. It is admitted the firm of 'Rose, Robbins & Co.' is engaged in the selling of paper, writing materials, and such articles as are used in the book stores of the Taxing District of Shelby County, and that it was a line of such articles for the sale of which the said defendant herein was drumming at the time of his arrest."

The statute expressly provided: "All drummers, and all persons not having a regular licensed house of business in the taxing district, offering for sale or selling goods, wares or merchandise therein, by sample, shall be required to pay to the county trustee the sum of ten dollars per week or twenty-five dollars per month for such privi-

lege." The act itself expressly provided that it was a *privilege tax.* The court on that account held it void as to drummers engaged in interstate commerce.

Other cases followed the Robbins case, among them being the case of Philadelphia & S. Mail S. S. Co. v. Pennsylvania, 122 U. S. 326, 30 L. ed. 1200, 7 Sup. Ct. Rep. 1118, wherein the State of Pennsylvania levied a tax on gross receipts derived from transportation of persons and property, by sea, between different states and foreign countries.

Asher v. Texas, 128 U. S. 129, 32 L. ed. 368, 2 Inters. Com. Rep. 241, 9 Sup. Ct. Rep. 1, was a case wherein a state statute required from "every commercial traveler, drummer, salesman or solicitor of trade, by sample or otherwise, an annual occupation tax." The statute, itself, provided that the tax was an occupation tax.

Stoutenburg v. Hennick, 129 U. S. 141, 9 Sup. Ct. Rep. 256, 32 L. ed. 637, involved an act of the legislative assembly of the District of Columbia which levied an occupation tax on drummers.

In McCall v. California, 136 U. S. 104, 3 Inters. Com. Rep. 181, 10 Sup. Ct. Rep. 881, 34 L. ed. 391, it appeared that McCall was an agent in San Francisco engaged in soliciting business for an Eastern railroad company, but not engaged in selling tick-

ets for that company, or receiving or paying out money on its account. The City of San Francisco enacted an occupation license tax on many occupations, including a railroad agency. The court held the act void as to interstate commerce on that ground.

In Brennan v. Titusville, 153 U. S. 289, 38 L. ed. 719, 4 Inters. Com. Rep. 658, 14 Sup. Ct. Rep. 829, was again presented the question of the validity of an ordinance providing "that all persons canvassing or soliciting, within said city (of Titusville), orders for goods, books, paintings, wares, or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the mayor a license to transact said business, and shall pay the said treasurer therefor the following sums, according to the time for which said license shall be granted," and also prescribing a penalty for failing to procure such license. An agreed statement of facts showed that Shepard was a manufacturer of picture frames and maker of portraits, residing in Chicago in the State of Illinois, of which state he was a citizen, and in which state he had his manufactory and place of business; that in the prosecution of his business he employed agents, who, under his directions, solicited orders for pictures and picture frames in the state of Pennsylvania and in other states of

the Union, by going personally to residents and citizens of said state of Pennsylvania and other states, and exhibiting samples of his pictures and frames, going, when necessary, from house to house; that Brennan was an agent of the said Shepard, employed by him to travel and solicit orders for pictures and frames, upon a salary; that upon receiving orders for pictures and picture frames, the agents of Shepard forwarded the same to him at Chicago, where the goods were made, and from there shipped to the purchasers in Titusville by railroad freight and express, and the price of said goods was collected and forwarded by the express companies and sometimes by the agents to said Shepard, at Chicago; that Brennan, the agent employed by Shepard, was engaged in conducting the business in the manner stated, at the time of his arrest, and acting solely for Shepard.

Upon such a state of facts, and upon a review of the cases, this court held it was not bound by the decision of the highest court of the state in which such a tax was authorized and imposed that such a tax was an exercise of the police power, and not of the taxing power; and that the ordinance in question imposed a tax upon interstate commerce, and was therefore void.

In Stockard v. Morgan, 185 U. S. 27, 46 L. ed.

785, 22 Sup. Ct. Rep. 576, there was considered the validity of a statute of Tennessee providing, on its face, for a privilege tax on the occupation of a merchandise broker as it was declared void on that ground as to interstate commerce.

Davis v. Virginia, 236 U. S. 697, 59 L. ed. 795, 35 Sup. Ct. Rep. 479, involved an occupation or peddlers' tax and, as to interstate commerce, transactions, was declared void.

In all of the foregoing cases, the legislation involved no thought of a regulation to prevent fraud, deceit or misrepresentation. Every case involved a *tax* as distinguished from a *regulatory license.*

Cheney Bros. Co. v. Massachusetts, 246 U. S. 147, 62 L. ed. 632, 38 Sup. Ct. Rep. 295, involved an excise tax.

Western Oil Refining Co. v. Lipscomb, 244 U. S. 346, 61 L. ed. 1181, 37 Sup. Ct. Rep. 623, involved a privilege tax.

Rogers v. Arkansas, 227 U. S. 401, 57 L. ed. 569, 33 Sup. Ct. Rep. 298; Crenshaw v. Arkansas, 227 U. S. 389, 57 L. ed. 565, 33 Sup. Ct. Rep. 294; Rearick v. Pennsylvania, 203 U. S. 507, 51 L. ed. 295, 27 Sup. Ct. Rep. 159; Dozier v. Alabama, 218 U. S. 124, 54 L. ed. 965, 28 L. R. A. (N. S.) 264, 30 Sup. Ct. Rep. 649, all involved occupation or privilege taxes.

In conclusion, we respectfully urge that the ordinance of the City of Portland here in question does not offend against Section 8, Article I, of the Constitution, nor against the 14th Amendment, for the reason that it meets a situation essentially local in character, that it does not directly burden interstate commerce and that it is an exercise of the police power reasonably adapted to the ends intended to be accomplished.

The ordinance applies to all types and classes of solicitors, irrespective of where the goods they offer for sale are manufactured and irrespective of where the books, periodicals or newspapers they solicit subscriptions for are printed.

No attempt is made by the ordinance to discriminate between goods manufactured in this state as against those manufactured in other states, or publications printed in this state as against those printed in other states.

The court will take judicial knowledge of the fact that the system employed by the appellant gives extensive opportunities for the commission of fraud in the sale of all classes of goods, especially in cases where, as alleged in appellant's bill, the solicitor selling the merchandise receives his compensation by means of an advance payment. By this system the principal has no direct

control over the solicitor. The solicitor is free to come and go as he will. The principal has no interest in the solicitor whatsoever except to receive his orders and apparently has no means of knowing what its solicitor is doing so far as the advance payment is concerned.

Contention may be made that where a customer is dissatisfied or has been cheated he or she may complain to a district manager and he will adjust matters. That may be true as to appellant, but there are manufacturers employing the system who have no representatives in the city. The manufacturer is thousands of miles away and, under such circumstances, the customer cannot afford to carry on a controversy. The manufacturer may be an honest and legitimate business house, manufacturing an honest product, yet its product, in the hands of dishonest solicitors under its sales system, induces and actually brings about fraudulent practices; this, through no fault of the manufacturer and, it may be, after every reasonable precaution is taken, but by reason of the system.

The system, itself, induces fraudulent practices. The glib solicitor, bent on making his commission, can and does make false statements and representations as to the character and quality of the goods he offers for sale.

And, again, it is a matter of common knowledge to all of us that there is the type of solicitor operating in our cities claiming to represent a manufacturer when, in fact, he is not such representative. This type of solicitor is daily defrauding the public. He always collects a deposit in advance. It is likewise a matter of common knowledge to all of us that there is a type of solicitor who states that he represents a certain manufacturer when in truth and in fact there is no such manufacturer. He always collects a deposit in advance.

It is also a matter of common knowledge to all of us that there is the type of solicitor who claims to represent manufacturers, which manufacturers do not sell their product by the same system employed by appellant, yet, this solicitor utilizes the system, takes an order, collects a dollar and disappears or perchance fills the order with inferior goods. It is a matter of common knowledge in the manufacturing trade world that manufacturers, who sell their goods only through retail stores, have spent thousands and thousands of dollars in calling the public's attention, through the medium of newspapers and magazines, to the operations of these bogus solicitors.

It is a matter of common knowledge that in the sale of silk hosiery there is a great opportunity for

solicitors to make misrepresentations as to the quality and the character of the goods manufactured. The average woman knows that full fashioned hosiery is more desirable than tubular knit hosiery. Many of them, however, do not know how to distinguish between a hose with a mock seam in the back and the genuine full fashioned hose. A genuine full fashioned hose is always made with a seam extending down the back and under the foot. In a mock seam hose the mock seam will be found to stop just above the base of the heel and the foot will be seamless. This difference opens the way for a solicitor to make misrepresentation. The solicitor may offer for sale hosiery stating that it is real silk or pure silk, whereas such hosiery is not wholly composed of silk but the top, toe and heel are of cotton and the sole of a mixture of cotton and silk.

What is true as to silk hosiery is also true as to underwear, particularly in representing a garment to be made of pure silk, when in truth and in fact artificial silk is used; or that a yarn is silk lisle when in truth and in fact there is no such yarn. And what is true as to hosiery and true as to underwear, is true as to all other manufactured articles.

The manufacturers themselves, no doubt, are not always free from blame for this situation. The

names used, the type of advertising, and the representations made therein, all tend to assist in the wrong. The use of the words "silk," "silk chiffon," "pure silk" and "pure thread silk" as applied to hosiery are generally misleading. See Records Federal Trade Commission against Durable Pure Silk Fashioned Hosiery, Inc., Docket 1099, May 8, 1924.

The appellant itself, indeed, is under citation before the Federal Trade Commission partly upon this basis. Federal Trade Commission Records, Docket 1123. However, appellee does not claim to be able to reach this situation which is of national, rather than of local, significance.

Scope of National Legislation. There is no legislation, by the national government, which reaches the field in which this ordinance operates. Congress has attempted to curtail dishonesty by the enactment of legislation preventing the use of the United States mails for fraudulent purposes. The remedy afforded by this enactment, however, is applicable only to fraudulent schemes employing the use of the mails. Solicitors of the type covered by this ordinance seldom, if ever, use the mails.

In September, 1914, congress created the Federal Trade Commission whose jurisdiction is sole-

ly confined to investigating and preventing nationally unfair methods of competion in commerce. The scope and powers of the Federal Trade Commission are specifically limited to the investigation and prevention of unfair methods of competition in national commerce. Jurisdiction of this body is not broad enough to deal with local conditions, if, indeed, it is a matter for the federal government at all.

In view of the facts, and in the light of the foregoing authorities, we respectfully submit, that the ordinance of the City of Portland, here in question, is a valid and constitutional exercise of the police power of the State of Oregon, exercised through the municipality, and that it does not directly burden or interfere with interstate commerce, nor enter a field which has been entered by congress to the exclusion of the state, nor is the ordinance repugnant to the 14th Amendment to the Federal Constitution.

Respectfully submitted,

FRANK S. GRANT, *City Attorney,*

ROBERT A. IMLAY, *Deputy City Attorney,*

Solicitors and Attorneys for Appellees.

No. 417.

IN THE

Supreme Court of the United States

REAL SILK HOSIERY MILLS, INCORPORATED,
Plaintiff and Appellant,

vs.

CITY OF PORTLAND, Defendant and Appellee.

APPEAL FROM CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION OF THE CURTIS PUBLISHING COMPANY FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

and

BRIEF.

JAMES WILSON BAYARD,
RALPH B. EVANS,
Attorneys for The Curtis Publishing Company,
1335 Land Title Building,
Philadelphia, Pa.

Allen, Lane & Scott, Prs., Philadelphia.

In the Supreme Court of the United States.

OCTOBER TERM, 1924. No. 417.

Real Silk Hosiery Mills, Inc., Plaintiff and Appellant,

vs.

City of Portland, Defendant and Appellee.

PETITION OF THE CURTIS PUBLISHING COMPANY FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

TO THE HONORABLE, THE CHIEF JUSTICE AND JUSTICES OF THE SAID COURT:

The petition of The Curtis Publishing Company respectfully showeth:—

Your petitioner, The Curtis Publishing Company, is a Pennsylvania corporation, having its principal office in the City of Philadelphia. It publishes The Ladies' Home Journal, The Saturday Evening Post and The Country Gentleman. These publications all have a wide circulation throughout the United States, the actual circulation, according to the last available figures, being:—

The Ladies' Home Journal, issue of February, 1925 ..... 2,393,601 copies
The Saturday Evening Post, issue of February 28, 1925 ..... 2,501,302 copies
The Country Gentleman, issue of February 28, 1925 ..... 820,407 copies

This wide circulation has been built up through a selling organization which has been established and maintained by The Curtis Publishing Company as the result of many years of effort and the expenditure of large sums of money. This Court is already familiar with the details of this organization in so far as it has to do with the sale and distribution of single copies. (Federal Trade Commission *vs.* Curtis Publishing Company, 260 U. S. 568.) In addition to the organization which this Court had occasion to consider in that case, the Company also maintains a large organization of subscription canvassers whose business is to solicit yearly subscriptions for the various magazines. Of the total circulation mentioned above, the portion represented by annual subscriptions was as follows:—

The Ladies' Home Journal	1,189,427
The Saturday Evening Post	704,466
The Country Gentleman	716,033

The number of subscription canvassers employed by the petitioner in this work is approximately 75,000. In the City of Portland alone there are over 200. For the most part these canvassers are men and women who are regularly engaged in other lines of business, and who are enabled by this work to make additional money in their spare time. Every one of these canvassers is a duly authorized representative of The Curtis Publishing Company for the purpose of soliciting subscriptions and accepting payment. They are furnished by the Company with official receipt books authorizing them to accept money and give receipts on behalf of the Company.

When a subscription canvasser receives a subscription, he gives the subscriber a receipt, deducts the amount of his commission from the subscription price, and remits the balance to the office of the Company at Philadelphia, whereupon the subscription is duly entered. Instances where canvassers have failed to remit have been so rare as to be practically negligible, and in every such case the Company has recognized its responsibility and entered the subscrip-

tion. In other words, such losses fall upon the Company and not upon the subscriber.

The ordinance in question, if extended to apply to the petitioner's subscription canvassers, as under the broad language of the ordinance it might be, would require every canvasser in the City of Portland to pay an annual license fee of $50 in the case of those who work on foot, and $100 in the case of those using a vehicle, in addition to being obliged to furnish a bond in the penal sum of $500. The license fee is more than the average commission earned by the majority of subscription canvassers in a year. It is obvious that such a tax would not only be burdensome, but in most cases prohibitive and would virtually prevent the Company from soliciting subscriptions in the City of Portland and in other cities where similar ordinances have been or may be enacted.

Your petitioner therefore prays leave to file in this case a brief which is herewith submitted.

THE CURTIS PUBLISHING COMPANY,
By
M. E. DOUGLAS,
Circulation Manager.

STATE OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.

M. E. DOUGLAS, being duly sworn, says that the facts set forth in the foregoing petition are true.

M. E. DOUGLAS.

Sworn to and subscribed before me this 23rd day of April, 1925.

ELIZABETH P. PRICHARD
Notary Public.

My commission expires on the 6th day of March 1927

In the Supreme Court of the United States.

OCTOBER TERM, 1924. No. 417.

Real Silk Hosiery Mills, Inc., Plaintiff and Appellant,

vs.

City of Portland, Defendant and Appellee.

BRIEF ON BEHALF OF THE CURTIS PUBLISHING COMPANY.

The Circuit Court of Appeals has sustained the validity of the ordinance substantially upon two grounds: First, that it is not a direct burden upon interstate commerce, and Second, that it is a reasonable exercise of the local police power. Neither of these conclusions we submit is tenable under the facts set forth in the bill of complaint, which are to be taken as admitted for the purpose of this case.

I. THE ORDINANCE IS A DIRECT BURDEN UPON INTERSTATE COMMERCE.

The Circuit Court of Appeals has said that as the ordinance applies only to the solicitors and not to the appellant itself, and as the solicitor's connection with any sale terminates upon his receipt of the deposit made by the purchaser, it involves no interference with the interstate business carried on by the appellant. In other words, the Cir-

cuit Court of Appeals has divided the transaction resulting in a sale made by the appellant to a resident of Portland into two transactions, first the solicitation of the sale and the receipt of the deposit by the solicitor, and second the transmission of the order by the district sales manager and the delivery of the goods. From this premise it concludes that the first part of the transaction is wholly intrastate, and therefore a proper subject to local regulation.

The fallacy of this proposition has been well pointed out in the appellant's brief at pages 31 to 36. By the same reasoning almost every transaction involving interstate commerce might be resolved into several elements, some of which would be performed wholly within the state, but we submit that the true test is whether the transaction as a whole is one involving interstate commerce, and if it is, any local regulation which unreasonably interferes cannot be sustained upon the ground that in terms it affects only that part of the transaction which is performed wholly within the state. The solicitors in this case are agents of the appellant for the purpose of securing orders. Their function cannot logically be disassociated from the sales which result from their solicitation. They are an integral part of the machinery which carries on an interstate business.

> "The negotiation of sales of goods which are in another state for the purpose of introducing them into the state in which the negotiation is made is interstate commerce."
>
> Robbins *vs.* Shelby Taxing District, 120 U. S. 489 at page 497.

Following this case, it has been held in a long line of decisions by this Court that the solicitation of business by travelling salesmen or drummers is protected under the Commerce Clause from unreasonable local interference.

Certainly no real distinction is to be found in the fact that in this case the solicitor receives his commission in the

form of a payment made on account by the purchaser at the time the order is taken. The solicitor is just as much an instrument in the furtherance of the sale as if he received his compensation in some other form, and the argument that his connection with the transaction ceases when the order has been received would apply equally to a travelling salesman or a drummer. In other words, the reasoning of the Circuit Court of Appeals would apply equally well to cases such as this Court had under consideration in the Robbins case and those which have followed it, and is wholly at variance with the principles underlying the decisions in those cases.

2. THE ORDINANCE IS NOT JUSTIFIED AS A POLICE MEASURE.

The fact that the ordinance declares that an emergency exists and that it is necessary for the immediate preservation of the public health, peace and safety of the City of Portland, is not conclusive upon this Court.

> "This Court will determine for itself what is the necessary operation and effect of a state law challenged on the ground that it interferes with or burdens interstate commerce. The name, description or characterization given it by the legislature or the courts of the state will not necessarily control. Regard must be had to the substance of the measure rather than its form."
>
> Lacoste *vs.* Dept. of Conservation, 263 U. S. 545, at page 550.

While it must be conceded that the states have a right in the legitimate exercise of their police powers, to legislate on subjects relating to the health, life and safety of their citizens, even though such legislation may indirectly affect interstate commerce, it is clear that the present ordinance cannot be justified upon this ground. Speaking of

a similar ordinance, this Court said in Stoutenburg *vs.* Hennick, 129 U. S. 141, at page 148:—

> "The business referred to is thus definitively assigned to that class of subjects which calls for uniform rules and national legislation, and is excluded from that class which can be best regulated by rules and provisions suggested by the varying circumstances of different localities, and limited in their operation to such localities respectively. Cooley *vs.* Board of Wardens, 12 How. 299; Gilman *vs.* Philadelphia, 3 Wall. 713. It falls, therefore, within the domain of the great, distinct, substantive power to regulate commerce, the exercise of which cannot be treated as a mere matter of local concern, and committed to those immediately interested in the affairs of a particular locality."

In Brennan *vs.* Titusville, 153 U. S. 289, it was attempted to justify a similar ordinance upon the ground that it was a legitimate exercise of the police power and intended to protect against fraud. In disposing of this argument, the Court said, page 302:—

> "Even if it be that we are concluded by the opinion of the Supreme Court of the State that this ordinance was enacted in the exercise of the police power, we are still confronted with the difficult question as to how far an act held to be a police regulation, but which in fact affects interstate commerce, can be sustained. It is undoubtedly true that there are many police regulations which do affect interstate commerce, but which have been and will be sustained as clearly within the power of the State; but we think it must be considered, in view of a long line of decisions, that it is settled that nothing which is a direct burden upon interstate commerce can be imposed by the State without the assent of Congress, and that the silence of Congress in respect to any matter of interstate com-

merce is equivalent to a declaration on its part that it should be absolutely free.

"That this license tax is a direct burden on interstate commerce is not open to question."

If the real purpose of the ordinance is to protect people against fraudulent solicitors, it is not easy to see how this is accomplished by the exaction of a license fee or why, if that be the sole purpose of the ordinance, the license fee should be heavier in the case of solicitors using a vehicle, than in the case of those on foot. The ordinary and effective way to prevent such frauds is by criminal prosecutions. The denomination of the ordinance as a measure intended to protect the public health, peace and safety of the City is obviously a disguise intended to cloak what is in effect a tax measure and a direct burden on interstate commerce.

JAMES W. BAYARD,
RALPH B. EVANS,
Attorneys for The Curtis Publishing Company.